

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Eric Rigie	Team: Squad #3	CCRB Case #: 201609432	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Monday, 10/31/2016 9:35 PM	Location of Incident: § 87(2)(b)	Precinct: 113	18 Mo. SOL 4/30/2018	EO SOL 4/30/2018	
Date/Time CV Reported Thu, 11/03/2016 10:38 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 11/14/2016 1:57 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. SGT Edward Silvester	02780	918332	113 PCT
2. Officers			113 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Michael Mendola	15715	960935	113 PCT
2. POM William Schroder	26324	955463	113 PCT
3. SGT Burt Antoine	01082	939877	113 DET
4. POM Brian Fontanella	08615	956655	113 PCT
5. POM Kyle Young	03653	957300	113 PCT
6. POM Christophe Costello	03459	954671	113 PCT
7. POM Mark Lewis	05062	954060	113 PCT

Officer(s)	Allegation	Investigator Recommendation
A. Officers	Abuse: Officers searched § 87(2)(b)	§ 87(2)(b)
B. SGT Edward Silvester	Abuse: Sergeant Edward Silvester forcibly removed § 87(2)(b) to § 87(2)(b) in Queens.	§ 87(2)(b)
C. Officers	Discourtesy: Officers spoke discourteously to § 87(2)(b)	§ 87(2)(b)
D. SGT Edward Silvester	Force: Sergeant Edward Silvester used a Taser against § 87(2)(b)	§ 87(2)(b)
E. Officers	Force: Officers used physical force against § 87(2)(b)	§ 87(2)(b)

Case Summary

On November 3, 2017 § 87(2)(b) called 911 and reported that officers used force against her husband § 87(2)(b). The 911 operator reported § 87(2)(b)'s complaint to IAB on the same date. On November 14, 2017, this case was received by the CCRB under IAB log# 2016-39751.

On October 31, 2016, at approximately 9:35 p.m., PO Mark Lewis and PO Christopher Costello, of the 113th Precinct, responded to § 87(2)(b) in Queens in regards to a report of people fighting and shots fired. Upon arrival, PO Lewis and PO Costello observed § 87(2)(b) bleeding from a laceration to his shoulder and asked if he needed help. § 87(2)(b) replied that he did not need any help and walked away from the officers. PO Michael Mendola, PO William Schroder, PO Brian Fontanella, PO Kyle Young, PO Christopher Costello, Sgt. Edward Silvester, and other unknown officers, all from the 113th Precinct, arrived on the scene and followed § 87(2)(b). § 87(2)(b) told the officers that they could search him to confirm that he did not have a weapon on him and officers allegedly did so (**Allegation A**). Sgt. Silvester told § 87(2)(b) that he had to go to the hospital to have his injuries treated (**Allegation B**). § 87(2)(b) refused and cursed at the officers. Unknown officers responded by allegedly telling § 87(2)(b) to, "Shut the fuck up" (**Allegations C**). § 87(2)(b) continued to refuse to go to the hospital and Sgt. Silvester Tased him (**Allegation D**). § 87(2)(b) fell to the ground and within two seconds of the first Taser cycle, Sgt. Silvester used a second Taser cycle on § 87(2)(b) (also **Allegation D**). While § 87(2)(b) was on the ground, unknown officers allegedly punched and stomped on his back (**Allegation E**). Once § 87(2)(b) was handcuffed, the same unknown officers allegedly dragged § 87(2)(b) over broken glass on the ground (also **Allegation E**). This force allegedly caused § 87(2)(b) to sustain bruises and lacerations all over his body and also allegedly exacerbated his pre-existing laceration. The incident was witnessed by § 87(2)(b)'s friend § 87(2)(b), a female only known as § 87(2)(b) and two 911 callers who wished to remain anonymous. Sgt. Burt Antoine and other members of the 113th Precinct Detective Squad arrived on the scene after the Tasing. § 87(2)(b) was transported via ambulance to § 87(2)(b) to have his injuries treated and undergo a psychiatric evaluation.

There was no video footage of this incident. § 87(2)(b) provided to the investigation two audio recordings of him speaking to officers after being handcuffed, but prior to him being transported to the hospital.

Closure of this case was delayed past 90 days due to a three month delay in receiving § 87(2)(b)'s medical records from § 87(2)(b) and § 87(2)(b)'s approximately 45 day delay in providing a statement due to his desire to have his civil attorney present.

§ 87(2)(g)

Mediation, Civil and Criminal Histories

- This case was unsuitable for mediation due to § 87(2)(b)'s planned lawsuit.

- On March 28, 2017, a FOIL request to the Office of the Comptroller confirmed that § 87(2)(b) has not filed any Notice of Claim for this incident (01 Board Review).

- § 87(2)(b) § 87(2)(c)
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

Civilian and Officer CCRB Histories

- This is § 87(2)(b)'s first CCRB complaint (03 Board Review).
- Sgt. Silvester has been a member of the NYPD for 20 years and this is his first CCRB complaint.

Findings and Recommendations

Explanation of Subject Officer Identification

- With regard to **Allegation A**, § 87(2)(b) never identified or described the officers who allegedly searched him. § 87(2)(g)
 [REDACTED]
 [REDACTED]
 [REDACTED]
- Although PO Mendola prepared the AIDED report for § 87(2)(b) and PO Schroder rode in the ambulance with him, Sgt. Silvester acknowledged making the decision to transport § 87(2)(b) to the hospital and was the senior officer on-scene when the decision was made.
 § 87(2)(g)
 [REDACTED]
- With regard to **Allegation C**, § 87(2)(b) said an officer spoke discourteously to him while his back was turned, and he assumed it was Sgt. Silvester because he held the Taser. § 87(2)(b) initially described Sgt. Silvester as speaking discourteously to § 87(2)(b) but later said she was unsure if it was him. § 87(2)(b) said that multiple officers spoke discourteously to § 87(2)(b) but was unable to describe any specific officers. None of the other witnesses spoken to corroborated that any officers spoke discourteously to § 87(2)(b) and all officers denied doing so. § 87(2)(g)
 [REDACTED]
 [REDACTED]
 [REDACTED]
- With regard to **Allegation E**, § 87(2)(b) and § 87(2)(b) were unable to describe the officers who allegedly used force against § 87(2)(b). None of the other witnesses corroborated that any force was used when § 87(2)(b) was handcuffed or were close enough to describe the officers who handcuffed him. All officers denied assisting with § 87(2)(b)'s handcuffing and were unable to identify the officers involved. All officers further denied that any physical force was needed to handcuff § 87(2)(b) beyond pulling his hands behind his

back. The only Threat, Resistance, or Injury (TRI) form prepared for this incident was by Sgt. Silvester for Tasing § 87(2)(b)'s medical records did not mention any allegations against specific officers and did not fully corroborate the injuries he claimed. Additionally, due to the nature of the incident, many officers responded to the scene without being noted in the EVENT documents. § 87(2)(g)

Allegations Not Pleaded

- In his original complaint to IAB, § 87(2)(b) said that Sgt. Silvester told him, “Shut the fuck up or I’ll Tase you.” However, during his CCRB interview, § 87(2)(b) said that he only heard “Shut the fuck up” and did not see Sgt. Silvester say this, but only assumed it was him because he held the Taser. No other civilians or officers corroborated that Sgt. Silvester made this statement and Sgt. Silvester denied it. § 87(2)(g)
- Although § 87(2)(b) alleged that he was kept in handcuffs at § 87(2)(b) and questioned by officers, § 87(2)(b)'s medical records indicate that he was uncooperative as he underwent a physical and psychological evaluation and was released less than four and a half hours after being admitted. § 87(2)(g)

Allegation A –Abuse of Authority: Officers searched § 87(2)(b)

In the second audio recording provided by § 87(2)(b)'s attorney § 87(2)(b) § 87(2)(b) is heard telling unknown officers that, during the incident, he suggested officers search him and said that he would allow them to do so to ensure he did not have a weapon since shots were fired during the incident. These unknown officers subsequently searched him. § 87(2)(b) did not make this allegation during his CCRB interview, and only said that the officers asked him if he needed help (31 Board Review).

None of the interviewed officers stated that they searched § 87(2)(b)

Voluntary consent is an exception to the requirement for probable cause to search § 87(2)(b) People v. Gonzalez, 39 N.Y. 2d 122 (1976) (34 Board Review).

§ 87(2)(g)

Allegation B –Abuse of Authority: Sergeant Edward Silvester forcibly removed § 87(2)(b) to § 87(2)(b) in Queens.

§ 87(2)(b) said that he was shirtless while exercising by running laps up and down the block when he heard a shot fired and ran towards his house. Before he reached his house, he slipped on the curb and sustained a one inch laceration to his inner shoulder. § 87(2)(b) sustained no other injuries in the fall and continued walking toward his house at a normal pace when a marked NYPD vehicle pulled beside him. As § 87(2)(b) walked down the sidewalk, PO Lewis and PO Costello followed him on foot and PO Lewis asked § 87(2)(b) if he was hurt, whether he had been shot, and whether he needed help. § 87(2)(b) told PO Lewis calmly and in a normal tone of voice that he did not need any help and simply fell while he was jogging, but PO Lewis and PO Costello continued to follow him. Approximately 14 other uniformed officers and plainclothes officers, including Sgt. Silvester, then arrived on the scene in marked vehicles. These officers also followed § 87(2)(b) asked repeatedly if he needed help, and told him repeatedly that they had to take him to the hospital. § 87(2)(b) continued to refuse help, said that there was nothing wrong with him, and that he knew nothing about the shooting. The officers asked if § 87(2)(b) had been shot and he replied he had not. § 87(2)(b) asked the officers if he was a suspect and they replied that he was a victim. An officer asked § 87(2)(b) what he had been doing before they got there and he replied that he had been working out. At this point, § 87(2)(b) was raising his voice to attract the attention of others in the neighborhood so that they would watch and make sure he was safe from officers. After approximately three to four minutes of conversation, Sgt. Silvester Tased him (as discussed in detail in **Allegation D** below) and he was then handcuffed and other force was used against him (as discussed in **Allegation E** below). § 87(2)(b) decided he needed medical attention after he was handcuffed, because the alleged force used by the officers enlarged his shoulder laceration and caused him to sustain additional lacerations and bruises to his torso. § 87(2)(b)'s whole body was also sore and he had abdominal pain. PO Mendola and PO Schroder apologized, said § 87(2)(b) did nothing wrong, and said they would take off the handcuffs when he got to the hospital. PO Mendola and PO Schroder told § 87(2)(b) he was handcuffed for his protection and the officers' protection. PO Mendola and PO Schroder also told § 87(2)(b) that they thought he had been shot. § 87(2)(b) asked the officers to remove his handcuffs, but they did not do so until his injuries had been treated hours later. § 87(2)(b)'s original complaint to IAB was generally consistent with his CCRB interview (05 and 30 Board Review).

§ 87(2)(b) generally corroborated § 87(2)(b)'s account of the officers asking whether he wanted help and him refusing. § 87(2)(b) did not see § 87(2)(b)'s injuries during the incident, but observed his shoulder injury afterward and said that it appeared to be a slash (06 Board Review).

§ 87(2)(b) generally corroborated § 87(2)(b)'s statement, but said that he and § 87(2)(b) were attending a BBQ in the front yard of § 87(2)(b)'s house in which alcohol was served. § 87(2)(b) also said he was using his bathroom at home when he heard a shot fired. § 87(2)(b) could not observe any injuries on § 87(2)(b) until after he was Tased. In his original phone statement, § 87(2)(b) said that § 87(2)(b) was bleeding profusely after he fell on the sidewalk and also cut his hand (07 and 28 Board Review).

§ 87(2)(b) said that § 87(2)(b) was physically fighting another male only known as "§ 87(2)(b)" and a female only known as "§ 87(2)(b)". § 87(2)(b) heard shots fired, but did not know who fired the shots.

§ 87(2)(b) did not see blood during the incident, but believed that § 87(2)(b) was bleeding after the fight because the next day she observed a substantial amount of blood where the fight took place and on the sidewalk where § 87(2)(b) was walking (08 Board Review).

An unidentified individual who called 911 during the incident generally corroborated § 87(2)(b)'s account of § 87(2)(b) being involved in the fight that took place before the officers arrived. The caller could hear officers telling § 87(2)(b) that they saw him bleeding, but she could not see the blood herself. The caller corroborated that § 87(2)(b) did not cooperate with officers attempting to take him to the hospital (09 Board Review).

A second unidentified individual who called 911 during the incident generally corroborated § 87(2)(b)'s account of § 87(2)(b) being involved in a fight before officers arrived. This caller added that she observed that the male fighting § 87(2)(b) fired a gun and observed that one of the individuals fighting had a knife. The caller observed § 87(2)(b) bleeding from a wound on his chest or shoulder, but did not know whether § 87(2)(b) had been shot or stabbed. The caller said that § 87(2)(b) ran down the street when officers arrived and yelled, "Get the fuck away from me!" Later during the incident, the caller observed EMTs bandage § 87(2)(b)'s chest (10 Board Review).

Upon reviewing § 87(2)(b)'s first audio recording, Sgt. Antoine is heard telling § 87(2)(b) that he is being detained while the officers investigate the situation and asks if § 87(2)(b) wants to lie in the bed. § 87(2)(b) says that he wants to lie in the bed without handcuffs and asks Sgt. Antoine to un-handcuff him. Sgt. Antoine responds that they were told to keep § 87(2)(b) handcuffed until they got to the hospital. Sgt. Antoine mentioned that § 87(2)(b) was screaming and yelling. § 87(2)(b) asks why he is being detained and Sgt. Antoine replies that he is being detained while the officers investigate the entire situation. Another officer said that as soon as § 87(2)(b) got to the hospital they would take the handcuffs off. § 87(2)(b) asked Sgt. Antoine if he was going to the hospital, but he laughed and said he had to go because there was another shooting (031 Board Review).

Upon reviewing § 87(2)(b)'s second audio recording, § 87(2)(b) is heard saying he did not know where the shots came from, but that he was not shooting. At 1:17 an officer says they had to find out if § 87(2)(b) was shot. § 87(2)(b) yells that he told the officers he did not need help and was going home. The officer said that because § 87(2)(b) was slashed or cut, they did not know whether he was shot. § 87(2)(b) said that he sustained a laceration two hours before he got into the ambulance and was not fighting. The officer replies that if they see two shell casings on the ground and a male leaning against a pole with blood coming out of his arm, the assumption is that he was shot. At 3:45 hear handcuff clicking, § 87(2)(b) groaning, breathing heavily. § 87(2)(b) is heard asking where they are going. The officer replies that they are going to § 87(2)(b). § 87(2)(b) continues to groan and breathe heavily and then says something unintelligible (031 Board Review).

Sgt. Silvester said he first observed § 87(2)(b) with a bleeding wound to his right shoulder walking toward the officers. The wound was "bleeding a decent amount, but not real heavy." Sgt. Silvester could not tell what type of wound § 87(2)(b) had, but because of the report of gunshots he thought it could be a gunshot wound. § 87(2)(b) had no other visible wounds, but based on his

observations, Sgt. Silvester determined that § 87(2)(b) required medical attention. Sgt. Silvester asked § 87(2)(b) what happened to his shoulder and § 87(2)(b) replied that he did not know and was not talking to anyone. Sgt. Silvester decided that § 87(2)(b) would be detained to render aid both for his shoulder wound and because he believed § 87(2)(b) was an EDP because he became more aggressive by yelling at officers and failing to cooperate with getting medical treatment. Sgt. Silvester did not give any instructions to officers that § 87(2)(b) would be detained, but officers heard him explaining that to § 87(2)(b). When EMS arrived, § 87(2)(b) did not want to go to the hospital, but EMS eventually convinced him to go (11 Board Review).

PO Mendola, PO Schroder, PO Fontanella, PO Young, PO Costello, and PO Lewis generally corroborated Sgt. Silvester's account of § 87(2)(b)'s injuries and his removal to the hospital (12-17 Board Review).

Sgt. Antoine arrived on the scene after § 87(2)(b) was in handcuffs, but generally corroborated Sgt. Silvester's account of § 87(2)(b)'s injuries (18 Board Review).

Upon reviewing detailed EVENT# § 87(2)(b) at 9:35 p.m. a female caller is noted as reporting three males fighting. At 9:36 p.m., no injuries or weapons are reported. At 9:36 p.m., the female caller reported that someone fired a shot. At 9:37 p.m., the female caller reported observing two males and a female. At 9:41 p.m., an ambulance is requested to the scene for an unknown condition. At 11:47 p.m., the ambulance and response auto three are ordered to § 87(2)(b) on the authority of Sgt. Silvester (33 Board Review).

Upon reviewing detailed EVENT# § 87(2)(b) at 9:36 p.m., a female caller reported that a male and a female were fighting in the street, but she did not know whether they had any weapons. At 9:37 p.m., the female reported hearing a shot fired, but did not know where it came from. Less than a minute later, the female reported hearing a second shot fired (32 Board Review).

Aided report# § 87(2)(b) prepared by PO Mendola and approved by Sgt. Joseph Difilippi confirmed that § 87(2)(b) was Tased. The report noted that § 87(2)(b) was an intoxicated EDP with a heavily bleeding wound. The report also noted that § 87(2)(b) was removed to § 87(2)(b) to remove the Taser prongs, get treatment for his pre-existing injury, and have a psychological evaluation (19 Board Review).

Among the photos provided with the TRI, photo# 7 shows § 87(2)(b) lying in a bed with a large bright red laceration to his right shoulder. Photo# 4 shows him strapped to a gurney with a white bandage covering his right shoulder area. Photo# 2 shows § 87(2)(b)'s large laceration closed with five butterfly bandages (20 Board Review).

§ 87(2)(b)'s medical records noted that he arrived uncooperative, belligerent, and had the smell of alcohol on his breath. § 87(2)(b) was diagnosed with a three inch laceration to his right breast lateral area through which muscle tissue was visible. § 87(2)(b) also had numerous lacerations to his torso and lacerations to his upper right arm and right hand. § 87(2)(b) received a psychiatric consult, sutures to his shoulder wound, an anti-biotic, a tetanus shot, and his other lacerations were cleaned with a saline solution (21 Board Review).

If an emotionally disturbed person's (EDP) actions constitute an immediate threat of serious physical injury or death to himself or others, officers must contain the individual, consult with a supervisor, and remove the EDP to a hospital in an ambulance (P.G. 221-13) (22 Board Review).

§ 87(2)(g)

[REDACTED]

Allegation C –Discourtesy: Officers spoke discourteously to § 87(2)(b)

Allegation E –Force: Officers used physical force against § 87(2)(b)

§ 87(2)(b) alleged that an officer told him to “Shut the fuck up” prior to being Tased. § 87(2)(b) also alleged that officers punched and stomped on his back during the handcuffing and dragged him over broken glass after he was handcuffed (05 Board Review).

§ 87(2)(g)

[REDACTED]

Allegation D –Force: Sergeant Edward Silvester used a Taser against § 87(2)(b)

§ 87(2)(b) said that after approximately three to four minutes of conversation with officers, Sgt. Silvester told him to shut up and so he turned partially around to see who was speaking to him. Sgt. Silvester then Tased § 87(2)(b) in the back and he fell to the ground. § 87(2)(b) had his hands at his side prior to being Tased and did not wave them around. § 87(2)(b) made no physical contact with any officers prior to being Tased and made no threats towards the officers. § 87(2)(b) was not given any commands prior to being Tased aside from being told that he had to go to the hospital. The officers did not try to grab § 87(2)(b) before he was Tased, but surrounded him to prevent him from walking away. § 87(2)(b) felt the shocking stop and start again while he was on the ground. § 87(2)(b)'s original complaint to IAB was generally consistent with his

CCRB interview, but he did not allege the usage of multiple Taser cycles (05 and 30 Board Review).

§ 87(2)(b) and § 87(2)(b) generally corroborated § 87(2)(b)'s statement pertaining to Sgt. Silvester Tasing him (06-07 and 28-29 Board Review).

The second 911 caller generally corroborated § 87(2)(b)'s account of the Tasing, but added that he was “acting crazy” by screaming for officers to, “Get the fuck away from me!” The officers responded to § 87(2)(b) by telling him to calm down (10 Board Review).

§ 87(2)(b) observed the Tasing, but was not close enough to describe details of the interaction (08 Board Review).

The first 911 caller did not observe § 87(2)(b) being Tased (09 Board Review).

Sgt. Silvester said he believed § 87(2)(b) could have a weapon on him because of the earlier radio report, because officers found shell casings in the street, and § 87(2)(b) was coming from the area where the shell casings were found. Sgt. Silvester did not know if § 87(2)(b) was involved in the earlier shooting since he refused to answer questions, but did not remember observing any bulges on his person. Upon interacting with officers, § 87(2)(b) became verbally combative and physically tensed up. § 87(2)(b) tensed up by holding his fists tight, while yelling at the officers, and possibly took a step towards them. Sgt. Silvester later said that he was not sure if § 87(2)(b) was stepping towards officers or simply trying to walk away. There were approximately four officers around § 87(2)(b) at a distance of approximately eight to 10 feet. These officers stepped back when § 87(2)(b) stepped forward, so he never made physical contact with them or got too close and no officers ever attempted to grab § 87(2)(b) because he was bleeding. Sgt. Silvester was asked whether § 87(2)(b) took a fighting stance and he replied, “You know, just getting upset, maybe mad. That type of thing. Not really throwing his fists up at us.” Sgt. Silvester spoke to § 87(2)(b) for approximately five minutes before Tasing him, but gave him no specific warnings, because he became more aggressive and Sgt. Silvester did not believe he would calm down. Although, § 87(2)(b) became more aggressive over the course of the incident, he did not engage in any actions beyond those previously stated. Sgt. Silvester walked around § 87(2)(b) to be able to Tase him in the back due to his shoulder wound in the front. Because § 87(2)(b) was bleeding a lot, Sgt. Silvester felt that Tasing him was the least amount of force the officers could have used to bring him under control. Sgt. Silvester Tased § 87(2)(b) in the back using a full five second cycle. Sgt. Silvester volunteered that the main reason he deployed his Taser was because he did not want to put officers into contact with § 87(2)(b)'s blood because he did not know if § 87(2)(b) had “anything wrong with him that way.” § 87(2)(b) fell to the ground and two officers moved in to handcuff him. § 87(2)(b) slightly resisted handcuffing by moving his arms side to side. § 87(2)(b) was not trying to strike any officer, but was only avoiding being handcuffed. Sgt. Silvester may have used a second Taser cycle because § 87(2)(b) did not comply with instructions while being handcuffed, but he did not specifically remember doing so. It was pointed out to Sgt. Silvester that the X-26 Datasheet showed two Taser Cycles only two seconds apart. Sgt. Silvester was asked if he gave § 87(2)(b) any chance to comply with instructions after the first Taser use. Sgt. Silvester said that he knew § 87(2)(b) was not complying at first and moving his hands around while on the ground, so that must have been

when he used the second cycle. The only instructions Sgt. Silvester gave to § 87(2)(b) was to tell him to let the officers handcuff him (11 Board Review).

PO Schroder generally corroborated Sgt. Silvester's account of the Tasing, but confirmed that Sgt. Silvester used a second cycle after § 87(2)(b) continued to curse and pulled his hands away from the officers trying to handcuff him. PO Schroder also added that, prior to the Tasing, there were at least eight to 10 officers on the scene, along with multiple sergeants and detectives (13 Board Review).

PO Fontanella, generally corroborated Sgt. Silvester's account of the Tasing, but added that § 87(2)(b) kept his hands in his pockets and refused numerous instructions to remove them prior to being Tased (14 Board Review).

PO Lewis generally corroborated Sgt. Silvester's account of the Tasing, but added that § 87(2)(b) made a general threat to officers along the lines of, "Don't fucking touch me! Get away or I'll hurt one of you guys!" prior to being Tased (17 Board Review).

PO Mendola, PO Costello, and PO Young generally corroborated Sgt. Silvester's account of the Tasing (12, 15, and 16 Board Review).

Sgt. Antoine was not on-scene until after the Tasing (18 Board Review).

TRI report number § 87(2)(b) prepared by Sgt. Silvester and approved by Sgt. Paul Jurgens of the 113th Precinct noted that Sgt. Silvester used his Taser to overcome § 87(2)(b)'s resistance or aggression. The report also noted that § 87(2)(b) was removed to the hospital after being Tased, but noted no injuries to § 87(2)(b) or officers. The report noted no force used by § 87(2)(b) against officers (23 Board Review).

The X-26 datasheet for Sgt. Silvester's Taser noted a five second Taser cycle in sequence 375 dated October 31, 2016, at 9:45:46 p.m. A second five second cycle is noted as being used two seconds after the end of the first cycle in sequence 376 dated October 31, 2016, at 9:45:53 p.m. (24 Board Review).

Upon reviewing police radio communications of the incident, at approximately 05:30, a male is heard yelling unknown statements in the background. An officer then requests an ambulance to the location, but said that the individual to be assisted was being uncooperative (25 Board Review).

The unit information sheet for detailed EVENT# § 87(2)(b) showed at least four units on scene prior to the Tasing (33 Board Review).

Tasers should only be used against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or other persons actually present. Officers must consider the totality of the circumstances when deciding the reasonable amount of force necessary to overcome resistance when effecting an arrest or taking a mentally ill or emotionally disturbed person into custody. Some factors to consider include, but

are not limited to the nature and severity of the crime/ circumstances; actions taken by the subject; duration of the action; immediacy of the perceived threat or harm to the subject, members of the service, and/ or bystanders; whether the subject is actively resisting custody; whether the subject is attempting to evade arrest by flight; number of subjects in comparison to the number of officers; size, age, and condition of the subject in comparison to officers; subject's violent history, if known; presence of hostile crowd or agitators; subject apparently under the influence of a stimulant/ narcotic which would affect pain tolerance or increase the likelihood of violence (P.G. 221-08) (26 Board Review).

Officers will use only the reasonable force necessary to gain control or custody of an individual (P.G. 221-01) (27 Board Review).

§ 87(2)(g)



§ 87(2)(g)



Squad: 3

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date